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 Attorneys for Defendant United Rentals Northwest, Inc.

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

RICHARD ENGER,  
 Plaintiff,

v.

UNITED RENTALS, INC., JLG CORP., JLG  
 INDUSTRIES, INC., OSHKOSH CORP.,  
 OSHKOSH INDUSTRIES, INC. and DOES 1  
 through 10,  
 Defendants.

USDC No. 3:08-cv-04882-BZ

**JOINT CASE MANAGEMENT  
 CONFERENCE STATEMENT  
 [FRCP 26(f)]**

Date: February 2, 2009  
 Time: 4:00 p.m.  
 Place: U.S. District Court  
 Courtroom G, 15<sup>th</sup> Floor  
 San Francisco, CA  
 Judge: Bernard Zimmerman

Complaint filed: August 29, 2008



1  
2 Plaintiff RICHARD ENGER ("Plaintiff"), and Defendants JLG INDUSTRIES, INC. and  
3 UNITED RENTALS NORTHWEST, INC. submit this FRCP Rule 26(f) Joint Case Management  
4 Statement in the above-captioned case.

5 **1. Jurisdiction and Service:** Defendant JLG Industries, Inc. removed this action to  
6 the U.S. District Court for the Northern District of California on October 24, 2008, pursuant to  
7 jurisdiction under 28. U.S.C. § 1441(b) (diversity and amount in controversy exceeds \$75,000).  
8 Personal jurisdiction and venue are not contested. The parties do not anticipate joining any other  
9 parties.

10 **2. Facts:** Plaintiff alleges the following. Defendants have no knowledge of the  
11 happening of the accident, and do not concede any of the alleged facts, or any liability.

12 On September 20, 2006, plaintiff Richard Enger, a tree trimmer employed by the City &  
13 County of San Francisco, was injured when the basket a JLG boomlift 1350 SJP lowered. Plaintiff  
14 contends that the boomlift was defective in design and manufacture. The boomlift was rented from  
15 United Rentals Northwest, Inc.

16 The principal factual issues are:

- 17 • How plaintiff's injury occurred;
- 18 • Whether plaintiff's alleged injuries were caused by a defect in the subject boomlift;
- 19 • Whether the alleged defect existed at the time of manufacture, sale and/or rental;
- 20 • Whether appropriate warnings were given by defendants regarding operation of the subject
- 21 boomlift;
- 22 • Whether the subject boomlift was modified by plaintiff or others;
- 23 • Plaintiff's training and experience regarding boomlift operation;
- 24 • Whether plaintiff or others misused the subject boomlift;
- 25 • Whether plaintiff acted reasonably to avoid the accident or reduce damages;
- 26 • The condition of the subject boomlift and its component parts;
- 27 • The nature and extent of plaintiff's alleged injuries and damages resulting from his alleged
- 28 accident;



- 1 • The amount and reasonableness of payments made to or on behalf of plaintiff.
- 2 **3. Legal Issues:** The principal disputed legal issues are:
- 3 • Whether the subject boomlift was defective at the time of manufacture, sale and rental;
- 4 • Whether the consumer expectation or risk benefit tests will be utilized;
- 5 • Whether plaintiff was a sophisticated user of the subject boomlift;
- 6 • Whether the subject boomlift was misused by plaintiff, his co-workers or employer;
- 7 • Whether the subject boomlift caused or contributed to the accident;
- 8 • Whether the accident caused or contributed to plaintiff's claimed damages;
- 9 • The admissibility of any Cal-OSHA findings;
- 10 • The discoverability of any City & County of San Francisco's investigation findings.
- 11 • Whether any express or implied warranties apply
- 12 • The admissibility of any prior similar accidents or lack of same
- 13 • The admissibility of product recalls, if any
- 14 • The admissibility of subsequent design changes, if any
- 15 **4. Motions:** Plaintiff has no pending motions. Plaintiff may move for
- 16 remand.
- 17 Defendants may bring motions for summary judgment and/or motions in limine once
- 18 discovery has been completed.
- 19 **5. Amendment of Pleadings:** None expected at this time.
- 20 **6. Evidence Preservation:** The parties will exchange documents via written
- 21 discovery. The subject boomlift is in the custody of defendant United Rentals Northwest, Inc.
- 22 **7. Initial Disclosures:** The parties will exchange Initial Disclosures on January
- 23 26, 2009.
- 24 **8. Discovery:** The parties anticipate written discovery will be exchanged.
- 25 Plaintiff intends to notice the depositions of persons most knowledgeable of defendants, and
- 26 percipient and expert witnesses..
- 27 Defendants intend to notice the depositions of plaintiff, plaintiff's co-workers, plaintiff's
- 28 supervisor, plaintiff's treating physicians, and percipient and expert witnesses.



1 Defendant United Rentals Northwest, Inc. requests leave to propound up to fifty  
2 interrogatories. Plaintiff opposes such request.

3 **9. Class Actions:** Not applicable.

4 **10. Related Cases:** Not applicable.

5 **11. Relief:** Plaintiff seeks general and special damages as a result of his alleged  
6 personal injuries.

7 **12. Settlement and ADR:** The parties may be amenable to mediation after  
8 discovery has been completed. Plaintiff proposes Steven Harper and Judge William Cahill as  
9 mediators. Defendant JLG Industries, Inc. proposes Dan Kelly as a mediator.

10 **13. Consent To Magistrate Judge For All Purposes:** The parties consent.

11 **14. Other References:** Not applicable.

12 **15. Narrowing of Issues:** Unknown at present.

13 **16. Expedited Schedule:** No.

14 **17. Scheduling:** The parties propose the following schedule:

- 15 • Designation of experts for the parties seeking affirmative relief: 120 days before trial;
- 16 • Designation of rebuttal experts: 90 days before trial;
- 17 • Discovery cut-off: 120 days before trial;
- 18 • Dispositive motions heard: per court order;
- 19 • Trial: June, 2010.

20 **18. Trial:** Plaintiff and defendants have demanded a jury trial. The parties  
21 estimate that the trial will consume 7 to 10 court days.

22 **19. Disclosure of Non-Party Interested Entities or Persons:** Defendant JLG  
23 Industries, Inc. discloses that Oshkosh Truck Corporation is an interested party. Defendant United  
24 Rentals, Northwest, Inc. has no interested non-parties to disclose.

25 **20. Such Other Matters As May Facilitate The Just, Speedy and Inexpensive**  
26 **Disposition of this Matter:** There are no pending discovery disputes. The parties intend to serve  
27 their Initial Disclosures on January, 26, 2009.

28 **Signature and Certification By Parties And Trial Counsel.**



1 Pursuant to Civil L.R. 16-12, each of the undersigned certifies that he or she has read the  
2 brochure entitled, "Dispute Resolution Procedures in the Northern District of California," discussed  
3 the available resolution options provided by the court and private entities and has considered whether  
4 this case might benefit from any of the available dispute resolution options.

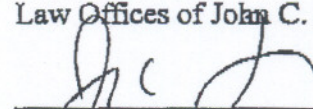
5 **F.R.C.P. Rule 26(f) Report**

6 The parties have conferred according to Rule 26(f) and the agreed upon plan is outlined above.

7 Dated:

1-7-09

Law Offices of John C. Smith, Jr.

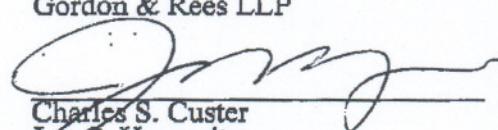
  
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Attorneys for Plaintiff Richard Enger

10 Dated:

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